

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
ORANGEBURG DIVISION

James A. Spears,	)	C/A No. 5:16-cv-00671-TMC-KDW
	)	
Petitioner,	)	
	)	
vs.	)	ORDER
	)	
Warden FCI Williamsburg,	)	
	)	
Respondent.	)	
	)	

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This case is before the court because of Plaintiff's failure to comply with the magistrate judge's Orders of June 6 and July 25, 2016. (ECF Nos. 32 and 37). A review of the record indicates that the magistrate judge ordered Plaintiff to comply with the undersigned's Order dated May 20, 2016 (ECF No. 27), by submitting items needed to render this case into proper form within twenty-one days. (ECF Nos. 32 and 37). In each of her Orders, the magistrate judge specifically informed Plaintiff that if he failed to provide the required items, this case would be dismissed *without prejudice*. *Id.* After a non-compliant response to the June 6, 2016 Order (ECF No. 34), Plaintiff was specifically informed in the July 25, 2016 Order that it was his final opportunity to comply and bring the case into proper form (ECF No. 37). The court has not received any response from Plaintiff to that Order, and the time for compliance has passed.

Further, the mail in which the July 25th Order was sent to Plaintiff at the address provided when the case was filed has not been returned to the court, thus it is presumed that Plaintiff received the Order, but has neglected to comply with it within the time permitted under the Order.

Plaintiff's lack of response to the July 25th Order, despite clear warnings that failure to comply would result in dismissal and that it was his final opportunity to comply, indicates intent to not continue prosecuting this case and subjects this case to dismissal. *See* Fed. R. Civ. P. 41(b) (district courts may dismiss an action if a Plaintiff fails to comply with "any order of the court."); *see also Choice Hotels Int'l, Inc. v. Goodwin & Boone*, 11 F.3d 469, 471-72 (4th Cir. 1993) (dismissal with prejudice appropriate where warning given); *Chandler Leasing Corp. v. Lopez*, 669 F.2d 919, 920 (4th Cir. 1982) (court may dismiss *sua sponte*). Accordingly, this case is dismissed *without prejudice*. The Clerk of Court shall close the file.<sup>1</sup>

**IT IS SO ORDERED.**

s/Timothy M. Cain  
United States District Judge

September 30, 2016  
Anderson, South Carolina

#### **NOTICE OF RIGHT TO APPEAL**

The parties are hereby notified of the right to appeal this Order within the time period set forth under Rules 3 and 4 of the Federal Rules of Appellate Procedure.

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<sup>1</sup> Under General Order, Misc. No. 3:07-5014-JFA, this dismissal *without prejudice* does *not* count as a "strike" for purposes of the "three strikes" provision of 28 U.S.C. § 1915(g).